

Roland Fox

Connecticut v Congo

30th November 2006

1	with the requirements for nomination.	03:03:02
2	Q. And are you aware of when the lawsuit we're	03:03:04
3	here about today began? Do you know the date?	03:03:07
4	A. I believe it's October 2005.	03:03:11
5	Q. Well, do you know when -- when the lawsuit	03:03:15
6	actually began?	03:03:19
7	A. October 2005.	03:03:19
8	Q. Are you aware that CMS was served with	03:03:24
9	Af-Cap's request for garnishment writs in this action at the	03:03:29
10	end of August of 2005?	03:03:33
11	A. I thought the writ was October. I may be	03:03:41
12	wrong, but I thought it was October. That was my	03:03:43
13	recollection. I suspect you're probably right.	03:03:45
14	Q. Are you aware that writs of garnishment were	03:03:53
15	ordered in this case on September 30th, 2005?	03:03:56
16	MR. LIPE: I object to the form.	03:03:59
17	A. No. I thought it was some time in October.	03:04:01
18	I'm sure we were served in October.	03:04:04
19	Q. Then you'll agree with me on October 12th,	03:04:07
20	2005 writs of garnishment were served on CMS in this case?	03:04:09
21	MR. LIPE: I object to the form.	03:04:14
22	A. Was it writs or --? I don't know. Who did	03:04:16
23	you serve them on? Sorry, I'm not supposed to ask	03:04:19
24	questions. I'm not sure whether they were served on CMS or	03:04:22
25	not.	03:04:26

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1	Q. That's fine. They were served	03:04:28
2	on October 12th, 2005 on CMS corporate representative in	03:04:30
3	Delaware. Were you aware of that?	03:04:34
4	MR. LIPE: I object to the form.	03:04:37
5	A. I was aware there was a writ issued on or	03:04:39
6	served on 12th October. Whether it was validly served or	03:04:44
7	not I'm not in a position to answer because that's a matter	03:04:48
8	of US law.	03:04:52
9	Q. And it's correct that the writ hasn't been	03:04:59
10	dismissed?	03:05:02
11	A. It has not been dismissed. Indeed, I'm not	03:05:04
12	even sure it was validly issued, but that's a matter, again,	03:05:19
13	of US law.	03:05:23
14	Q. I show you Exhibit 13.	03:05:24
15	(Exhibit 13 marked for identification).	03:05:27
16	Q. Have you seen this document before?	03:05:48
17	A. Yes.	03:05:50
18	Q. What is this document?	03:05:55
19	A. It's a document sent by CMS to the Congo	03:05:56
20	showing statistics of production and barrels lifted	03:05:59
21	in October. It contains also a list of the -- contains also	03:06:05
22	a schedule of the under/over lifts and various other items.	03:06:12
23	Q. And this is statistics for October 2005?	03:06:21
24	A. It talks here about the production that was	03:06:26
25	commercializable in October 2005 --	03:06:31

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1	Q. And what is --	03:06:40
2	A. -- and the volume of oil that had been lifted	03:06:42
3	in October 2005 which, as you can see, was zero.	03:06:44
4	Q. What does "Production commercialisable" mean?	03:06:56
5	A. It's the total production less the production	03:07:01
6	that had been utilized in production operations, in --	03:07:03
7	during the relevant period.	03:07:11
8	Q. You said this reflects that there was no	03:07:21
9	lifting taken?	03:07:23
10	A. Correct.	03:07:24
11	Q. And why would no lifting have been taken?	03:07:25
12	A. Because there wasn't sufficient oil in the	03:07:27
13	conkouati to make a lifting sensible.	03:07:30
14	Q. And these statistics for October 2005, which	03:07:34
15	is the same month that the garnishment was served; correct?	03:07:41
16	A. Correct.	03:07:45
17	Q. Item 3 --	03:07:46
18	A. Hmm.	03:07:49
19	Q. -- on page 1575, which is page 1 --	03:07:49
20	A. Hmm.	03:07:54
21	Q. -- what is "Redevance comptabilite" mean?	03:07:54
22	A. This is the calculations -- the	03:08:02
23	computations -- it is described in the documentation of the	03:08:03
24	royalty -- that will otherwise or that will eventually	03:08:07
25	become taken by way of barrels of oil at the time that SNPC	03:08:10

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1	Q. Okay. What is Nuevo Congo and Nuevo Congo	03:14:31
2	Limited share?	03:14:36
3	A. 16.67%.	03:14:37
4	Q. 16?	03:14:40
5	A. .67%.	03:14:42
6	Q. Just so I'm clear about this, and so the	03:14:44
7	record is clear, the number on page 1 of this document,	03:14:47
8	document -- Exhibit 13, is a calculation which takes into	03:14:50
9	account the royalty for each of the working interest owners	03:14:54
10	proportionately that would be due to the Congo?	03:14:59
11	A. It -- yes, it's a combination of all the	03:15:02
12	royalties that are ultimately taken.	03:15:05
13	Q. It's Nuevo's Congo 16.67%, it is Nuevo's Congo	03:15:07
14	Limited, CMS Nomeco's percentage and SNPC's percentage,	03:15:15
15	which was 14.5%; right?	03:15:20
16	A. That is correct, yes.	03:15:23
17	Q. And who is Mr. Faillenet?	03:15:24
18	A. He's the General Manager in Congo.	03:15:28
19	Q. And he's responsible for preparing these	03:15:32
20	documents?	03:15:34
21	A. I believe they will be prepared by the	03:15:35
22	accountant in Congo and signed off by Eric Faillenet.	03:15:37
23	Q. Can you give me the name of the accountant?	03:15:45
24	A. Arnaud Le Blanc -- A-r-n-a-u-d, new word L-e,	03:15:49
25	new word B-l-a-n-c.	03:15:55

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1 Q. And is page 1 a summary of the underlying 03:16:05
2 documents attached to Exhibit 13? 03:16:08
3 A. I mean, a summary -- I summary of certain 03:16:11
4 elements of it, yes. 03:16:14
5 Q. Okay. And what is page 2 telling us? 03:16:15
6 A. It's -- it's a -- it's a list of the net 03:16:18
7 production or the real production, sorry, compared to what 03:16:24
8 had been provisioned. So it's an updated list of how much 03:16:28
9 off the estimates the production actually was. 03:16:34
10 Q. Okay. And page 3 is a pricing schedule? 03:16:37
11 A. Yes, the oil that's produced isn't normal 03:16:43
12 crude oil, it is number 6 fuel oil; and this is the prices 03:16:46
13 at which number 6 fuel oil is sold. 03:16:51
14 Q. On page 1578, what are these diagrams? What 03:17:08
15 are these? 03:17:12
16 A. They're a list of the oil in storage -- the 03:17:13
17 oil actually on the konkouati. It talks about, for 03:17:18
18 instance, what the API is, its quality, effectively. Some 03:17:21
19 oil is wet oil, some is condensate, and this is just 03:17:26
20 comparing the inventory, the various items. 03:17:32
21 Q. And there's an opening stock/closing stock, is 03:17:37
22 that -- what does that relate to? 03:17:40
23 A. That would represent the amount on the tanker 03:17:42
24 at the beginning of the period and at the end. 03:17:44
25 Q. And then there on 1579. Is this an updated -- 03:17:46

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1	A. Over/under lift statement.	03:17:55
2	Q. Over/under?	03:17:56
3	A. Yes.	03:17:58
4	Q. Okay. And the shaded portions of the	03:17:58
5	under/over, are those -- do they represent the SNPC royalty	03:18:01
6	lifting -- the SNPC/JOA portion as well as the royalty	03:18:09
7	lifting?	03:18:14
8	A. Correct.	03:18:14
9	Q. And then if you look at -- if we look at the	03:18:21
10	one from 26th November 2000 -- let's look	03:18:25
11	at September 7th --	03:18:36
12	A. What's the lifting number on the left? It is	03:18:38
13	the second column in.	03:18:40
14	Q. 130. We'll look at number 130.	03:18:43
15	A. Right. Okay.	03:18:45
16	Q. This would be a CMS lifting; correct?	03:18:46
17	A. Yes.	03:18:50
18	Q. Okay. And it was 435,000 barrels?	03:18:50
19	A. Correct.	03:18:57
20	Q. How was the selling price represented?	03:18:59
21	A. It's the \$43.9038.	03:19:02
22	Q. Okay. Okay. So I can calculate how much you	03:19:08
23	sold the oil for if I multiplied the number of barrels by	03:19:14
24	that amount of dollars?	03:19:20
25	A. Exactly, yes.	03:19:22

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1	Q. And then there's a notation here for 130	03:19:23
2	royalty in the activities column?	03:19:30
3	A. Yes.	03:19:32
4	Q. What does that mean?	03:19:32
5	A. That's the computation of the royalty that	03:19:33
6	will become taken by the Government at the time of the next	03:19:39
7	SNPC lifting.	03:19:45
8	Q. So CMS is keeping a running tally --	03:19:46
9	A. Of what will ultimately become taken by the	03:19:49
10	Government, yes.	03:19:52
11	Q. And then this reference to tax maritime?	03:19:55
12	A. Yes.	03:20:00
13	Q. Lift 130. What -- what is that?	03:20:00
14	A. That's the issue that we've discussed earlier	03:20:04
15	on, the off-set.	03:20:06
16	Q. And by that you mean the off-set?	03:20:08
17	A. Yes.	03:20:09
18	Q. And what -- so it's -- is that a negative	03:20:10
19	number?	03:20:13
20	A. Yes, it's a -- I mean, it's a -- it was	03:20:14
21	a charge that, as I've explained before, has been met by	03:20:19
22	CMS; it's compensated its lifters and it's been -- CMS has	03:20:24
23	then deducted a barrel equivalent of that value in the	03:20:31
24	calculation of the Government's entitlement.	03:20:36
25	Q. And then is that based on an actual number	03:20:41

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1	that CMS would have to pay or is that --	03:20:44
2	A. Yes, there's a -- under the terms of the --	03:20:47
3	I think it was 1998 decree, it spelled out how the maritime	03:20:51
4	tax is calculated; and essentially it's -- it's something	03:20:57
5	like \$2 a barrel to one Government entity -- \$2, sorry not	03:21:03
6	per barrel per metric ton, to one Government entity and	03:21:11
7	60 cents per metric ton to another Government entity.	03:21:16
8	Q. I'm familiar with the 99 decree, I'm just	03:21:23
9	not --	03:21:27
10	A. I'm sorry. It may be the 99 decree.	03:21:28
11	Q. Is it the September 1999 decree that you're	03:21:32
12	referring to?	03:21:35
13	A. It's the one that imposed the maritime tax.	03:21:36
14	MR. LIPE: That's not the September 99 decree.	03:21:39
15	It's amongst the documents that we sent over to you this	03:21:41
16	week.	03:21:46
17	Q. We will go back through. Dates are starting	03:21:47
18	to get confusing.	03:21:50
19	MR. LIPE: I understand.	03:21:52
20	Q. Then the last reference in the activities	03:21:53
21	column, "2nd qtr 05 royalty". What does that mean?	03:21:57
22	A. The royalty are paid -- sorry, the royalties	03:22:08
23	are calculated usual initially on a basis of 85% of the	03:22:11
24	total; and then, on a quarterly basis, it's corrected.	03:22:16
25	Q. Why is that?	03:22:20

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1	A. It's what the Convention provides for.	03:22:20
2	Q. Then it's tried up each quarter under the	03:22:24
3	Convention?	03:22:27
4	A. Exactly, yes.	03:22:28
5	Q. Under section 7 of the Convention; correct?	03:22:29
6	A. I think it's in the appendix to the	03:22:32
7	Convention. I think that's where it's dealt with.	03:22:34
8	Q. Then, if we -- we can come back to that?	03:23:06
9	A. Yeah.	03:23:09
10	Q. I'm not concerned exactly where it is in the	03:23:09
11	Convention, but it derived from the Convention?	03:23:11
12	A. Exactly, yes.	03:23:15
13	Q. Then lifting 131?	03:23:17
14	A. Yeah.	03:23:19
15	Q. That would be an SNPC lifting; correct?	03:23:19
16	A. Correct, yes.	03:23:22
17	Q. And the barrels category, can you read that?	03:23:25
18	A. Yes, it's 605,004.	03:23:34
19	Q. And then there's a deduction in the next	03:23:38
20	paragraph over/under SNPC?	03:23:41
21	A. Yeah, that's 373,420, I think.	03:23:43
22	Q. And it's a negative number; so can you explain	03:23:51
23	that number?	03:23:56
24	A. It's the amount of the -- it's the amount of	03:23:56
25	the over lift by SNPC on that lifting.	03:23:58

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1 Q. So they over lifted by 373,420? 03:24:01

2 A. On that lifting, yes. 03:24:07

3 Q. On that lifting. And by over lift -- what 03:24:08

4 would they have been entitled to? 03:24:11

5 A. 12.5% of 605,004. 03:24:14

6 Q. I see. And so the over/under to the 03:24:17

7 Government then is negative 155,960? 03:24:21

8 A. What you have -- you have to think in terms of 03:24:32

9 what SNPC took and what it was entitled to. What it 03:24:34

10 actually took for itself was the 605 less the Government 03:24:38

11 share of 155. So that the balance -- so the Government took 03:24:43

12 its own oil -- own royalty oil of 155. So the difference 03:24:48

13 between the 605 and 155 is what SNPC actually took. 03:24:54

14 However, they're only entitled to 12.5% of that 605 due to 03:24:58

15 the provisions of the JOA. The difference between what they 03:25:03

16 actually took and what they were entitled to is that number, 03:25:06

17 373. 03:25:10

18 Q. And you said the difference between what they 03:25:27

19 actually took and what they were entitled to is the 373 03:25:32

20 number, that's the negative number? 03:25:37

21 A. That is correct, yes. So that shows they had 03:25:39

22 over lifted on that lifting by that quantity. 03:25:41

23 Q. Okay. In the last column the 155,360; is that 03:25:43

24 correct? 03:25:51

25 A. Yes. 03:25:52

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1 Q. What does that number represent? 03:25:53

2 A. That represents the amount of -- the number of 03:25:55

3 barrels of oil taken by the Government by way of royalty 03:26:00

4 oil. 03:26:03

5 Q. Okay. So that's the same as the number, the 03:26:04

6 negative number prior to it? 03:26:07

7 A. Yes. It off-sets one another effectively. 03:26:09

8 Q. The overall effect of this lifting is that 03:26:13

9 CMS -- is that SNPC is in a negative over/under position 03:26:16

10 and -- 03:26:20

11 A. Had -- I'm sorry. 03:26:21

12 Q. -- correct? 03:26:24

13 A. Had over lifted by 375,000 barrels on that 03:26:25

14 lifting. 03:26:28

15 Q. Okay. And what effect does that have in 03:26:28

16 calculating -- in the next -- when the next lifting is 03:26:31

17 taken? 03:26:34

18 A. What you have to do is to add up all of the 03:26:35

19 under/over lifts for SNPC and by doing so, which is 03:26:37

20 basically all the ones in that column we've just been 03:26:43

21 looking at, and then you will be able to tell the cumulative 03:26:47

22 over/under lifting position of SNPC; and that, together with 03:26:52

23 any royalty oil to be taken by the Government, would 03:26:58

24 determine when SNPC was entitled to take the next lifting. 03:27:01

25 It's that number you take into account in determining when 03:27:06

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1 **you hit the 275.** 03:27:10

2 Q. So to get to the 275 you subtract the 03:27:15

3 over/unders, the SNPC's over/under positions? 03:27:18

4 A. From day one. 03:27:23

5 Q. From day one? 03:27:24

6 A. Yeah. 03:27:25

7 Q. And then you have to add in the amount of oil 03:27:25

8 that CMS is accumulating? 03:27:29

9 A. No. 03:27:33

10 Q. No? 03:27:33

11 A. No. You'd then add in the computations -- the 03:27:34

12 relevant computations for the Government royalty oil; and 03:27:37

13 when you add the two together and that becomes more than 275 03:27:40

14 SNPC is entitled to take the next lifting. 03:27:46

15 Q. And that returns us, then, to paragraph 3 03:27:50

16 of -- to item 3 of the first page, which is that 70 barrels 03:27:52

17 this month are factored in to the over/under position? 03:28:00

18 A. Yes. What you'll see there, you see, in that 03:28:13

19 last section at the bottom of the page for the lifting 131, 03:28:16

20 the royalty oil computation for that lifting is 70.388, 03:28:19

21 which then is then -- it is actually 386 sorry, which is 03:28:26

22 then the number that appears on the first page of this 03:28:33

23 document. 03:28:36

24 Q. I see. The calculation is beginning again for 03:28:51

25 when they get to the 275? 03:28:55

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1	A. Yes, it's -- from that point you then try --	03:28:57
2	add the two elements together; and eventually you come to	03:29:00
3	a stage when the 275 is hit, at which point SNPC is entitled	03:29:03
4	to make a nomination for the next lifting.	03:29:07
5	Q. And then there's two numbers under the barrel	03:29:10
6	in the "O/U SNPC" column. Is that 2.953 down there at the	03:29:13
7	bottom?	03:29:21
8	A. 2953, yes.	03:29:22
9	Q. Then negative 2953?	03:29:23
10	A. Yes.	03:29:25
11	Q. What is -- what are those numbers?	03:29:26
12	A. Those are the lifting costs associated with	03:29:28
13	that which, as you can see, is around \$150,000, which is the	03:29:30
14	number we come back to that we discussed earlier this	03:29:35
15	morning.	03:29:39
16	Q. Oh, so part of their -- part of CMS's --	03:29:41
17	I'm sorry --	03:29:44
18	A. No, this is SNPC.	03:29:45
19	Q. Sorry. Part of SNPC's negative -- the	03:29:47
20	calculation of SNPC's negative position includes the	03:29:51
21	operating costs which CMS is entitled to subtract?	03:29:56
22	A. The \$150,000 worth of lifting costs.	03:30:02
23	Q. Right.	03:30:06
24	A. As you can see, each barrel on this particular	03:30:06
25	lifting is worth around \$50. It's around 3,000 barrels, so	03:30:09